(FW) FRANTZ WARD
ATTORNEYS AT LAW

Frantz Ward LLP I 200 Public Square, Suite 3000 I Cleveland, OH 44114
Phone (216) 515-1660 I Fax (216) 515-1650 I FrantzWard.com

Joel R. Hlavaty • Direct: (216) 515-1614 • jhlavaty@frantzward.com

May 15, 2017

The Honorable Cheryl L. Pollack
Magistrate Judge
U.S. District Court for the Eastern District of New York
Chambers Room 1230
Courtroom 13B – South
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Oladipo v. Cargo Airport Services USA, LLC*
U.S.D.C. E.D. NY Case No. 1:16-06165(WFK)(CLP)
Subpoenas for Medical Records

Dear Magistrate Judge Pollack:

As discussed during our May 3, 2017 status conference in the above-captioned matter, Defendant previously served subpoenas for medical records upon two medical care providers of Plaintiff that are located in New York:

South Nassau Communities Hospital
1 Healthy Way
Oceanside, New York 11572

Jason Grotas, M.D.
c/o Urological Surgical Care
290 Central Avenue, Suite 207
Lawrence, New York 11559

The subpoenas were sent to both entities on December 29, 2016, and a second subpoena was served upon South Nassau on March 22, 2017. To date, however, we have not received the requested records from either entity. Defendant would therefore appreciate the Court's assistance in obtaining the documents. To that end, I have attached new subpoenas directed to each of the entities, which Defendant respectfully requests be issued by the Court.

Thank you for your courtesy and anticipated assistance. If you need any additional information, please do not hesitate to contact the undersigned.

Sincerely,

Joel H. Hlavaty

cc: Ryan Smith
Louis Ginsberg
Drew Jordan

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Babatunde Oladipo
Plaintiff
v.
Cargo Airport Services USA, LLC
Defendant

Civil Action No. 1:16-cv-06165

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Urological Surgical Care (Dr. Jason Grotas)
290 Central Avenue, Suite 207 Lawrence, NY 11559

(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached authorization for release of medical records

Place: Frantz Ward LLP 200 Public Square, #3000 Cleveland, OH 44114	Date and Time: 05/30/2017 10:00 am

❐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: ______________

CLERK OF COURT

OR

_______________________________ *Signature of Clerk or Deputy Clerk*

_______________________________ *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Cargo Airport Services USA, LLC, who issues or requests this subpoena, are:

Ryan T. Smith, 200 Public Square, #3000 Cleveland, OH 44114, rsmith@frantzward.com, 216-515-1641

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:16-cv-06165

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* ______________________________
on *(date)* ______________ .

❒ I served the subpoena by delivering a copy to the named person as follows: ______________________
____
____ on *(date)* ______________ ; or

❒ I returned the subpoena unexecuted because: ______________________________________
____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of

$ ______________ .

My fees are $ ______________ for travel and $ ______________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
(i) is a party or a party's officer; or
(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:
(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***
(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***
(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
(i) fails to allow a reasonable time to comply;
(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
(iv) subjects a person to undue burden.
(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
(i) disclosing a trade secret or other confidential research, development, or commercial information; or
(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:
(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.
(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***
(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
(i) expressly make the claim; and
(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.
The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

AUTHORIZATION FOR RELEASE OF MEDICAL AND PSYCHOLOGICAL/PSYCHIATRIC INFORMATION

TO:
Dr. Jason Grotas MD.
290 Central Ave. Suite 207
Lawrence, NY 11559

The undersigned hereby authorizes the release of health information as described below to Frantz Ward LLP, 200 Public Square, Suite 3000, Cleveland, Ohio 44114-1230, and Lester Schwab Katz & Dyer LLP, 100 Wall St, 27th floor, New York, NY 10005. The health information disclosed to Frantz Ward LLP and Lester Schwab Katz & Dyer LLP, their employees, and their agents will be used in connection with the lawsuit captioned *Babatunde Oladipo v. Cargo Airport Services USA, LLC*, United States District Court for the Eastern District of New York, No. 16-cv-06165. This authorization will expire on the date on which the aforementioned litigation is settled, dismissed, or otherwise disposed. A photocopy of this authorization is to be considered as effective and valid as the original.

The health information subject to this authorization includes all information maintained by the entity listed above for services provided to **BABATUNDE OLADIPO**, including, but not limited to, all examinations, diagnoses, procedures, recommendations, and treatments, whether medical, psychological, or psychiatric in nature. The health information to be disclosed includes, but is not limited to, all medical records, psychological records, psychiatric records, evaluations, pathology reports, x-ray reports and films, progress notes, discharge summaries, operative reports, charts, summaries, patient questionnaires, treatment notes, billing records, psychological testing materials and answer sheets, emergency room reports, correspondence, and video and audio recordings.

I understand that the health information described above may be re-disclosed and no longer protected by the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996.

I understand that I am not required to sign this authorization to receive treatment from the above-listed entity.

I further understand that I may revoke this authorization by providing a written notice to the above-listed entity with a copy sent by certified mail to Frantz Ward LLP and Lester Schwab Katz & Dyer LLP at their respective above-listed addresses.

Dated this 9th day of DECEMBER, 2016

[signature]
BABATUNDE OLADIPO

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
SOCIAL SECURITY NUMBER

03/15/1956
DATE OF BIRTH

Med. Office
TEL # (516)239-8585
Diagnosed: Cancer.

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Babatunde Oladipo

Plaintiff

v.

Cargo Airport Services USA, LLC

Defendant

Civil Action No. 1:16-cv-06165

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: South Nassau Communities Hospital
1 Healthy Way Oceanside, NY 11572

(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached authorization for release of medical records

Place: Frantz Ward LLP 200 Public Square, #3000 Cleveland, OH 44114	Date and Time: 05/30/2017 10:00 am

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: ______________

CLERK OF COURT

OR

_______________________________ *Signature of Clerk or Deputy Clerk*

_______________________________ *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Cargo Airport Services USA, LLC, who issues or requests this subpoena, are:

Ryan T. Smith, 200 Public Square, #3000 Cleveland, OH 44114, rsmith@frantzward.com, 216-515-1641

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:16-cv-06165

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* ______________________________
on *(date)* ______________ .

❒ I served the subpoena by delivering a copy to the named person as follows: ______________________
____
____ on *(date)* ______________ ; or

❒ I returned the subpoena unexecuted because: ____________________________________
____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
$ ______________ .

My fees are $ __________ for travel and $ __________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:
(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
(i) is a party or a party's officer; or
(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:
(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***
(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***
(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:
(i) fails to allow a reasonable time to comply;
(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
(iv) subjects a person to undue burden.
(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:
(i) disclosing a trade secret or other confidential research, development, or commercial information; or
(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:
(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.
(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***
(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:
(i) expressly make the claim; and
(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.
(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.
The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

AUTHORIZATION FOR RELEASE OF
MEDICAL AND PSYCHOLOGICAL/PSYCHIATRIC INFORMATION

TO:
South Nassau Communities
Hospital
1 Healthy Way
Oceanside NY 11572

The undersigned hereby authorizes the release of health information as described below to Frantz Ward LLP, 200 Public Square, Suite 3000, Cleveland, Ohio 44114-1230, and Lester Schwab Katz & Dyer LLP, 100 Wall St, 27th floor, New York, NY 10005. The health information disclosed to Frantz Ward LLP and Lester Schwab Katz & Dyer LLP, their employees, and their agents will be used in connection with the lawsuit captioned *Babatunde Oladipo v. Cargo Airport Services USA, LLC*, United States District Court for the Eastern District of New York, No. 16-cv-06165. This authorization will expire on the date on which the aforementioned litigation is settled, dismissed, or otherwise disposed. A photocopy of this authorization is to be considered as effective and valid as the original.

The health information subject to this authorization includes all information maintained by the entity listed above for services provided to **BABATUNDE OLADIPO**, including, but not limited to, all examinations, diagnoses, procedures, recommendations, and treatments, whether medical, psychological, or psychiatric in nature. The health information to be disclosed includes, but is not limited to, all medical records, psychological records, psychiatric records, evaluations, pathology reports, x-ray reports and films, progress notes, discharge summaries, operative reports, charts, summaries, patient questionnaires, treatment notes, billing records, psychological testing materials and answer sheets, emergency room reports, correspondence, and video and audio recordings.

I understand that the health information described above may be re-disclosed and no longer protected by the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996.

I understand that I am not required to sign this authorization to receive treatment from the above-listed entity.

I further understand that I may revoke this authorization by providing a written notice to the above-listed entity with a copy sent by certified mail to Frantz Ward LLP and Lester Schwab Katz & Dyer LLP at their respective above-listed addresses.

Dated this 3 day of MARCH, 2017

[signature]
BABATUNDE OLADIPO

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
SOCIAL SECURITY NUMBER

03/15/1956
DATE OF BIRTH